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REMARKS/ARGUMENTS

This Amendment is being submitted along with an accompanying Request for Continued Examination (RCE) under 37 CFR § 1.114. Applicants respectfully request reconsideration of the present application in view of the amendments above and the following remarks, which are responsive to the final Official Action dated September 28, 2004. Upon entry of this response, Claims 1-9, 32-36, 49-52, 71-73, and 79-82 remain pending in the application.

Response to Rejections under 35 U.S.C. §103(a)

The Examiner has rejected Claims 1-9, 32-36, 49-52, and 71-73 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. US 2001/0047285 to Borders et al. (hereafter '*Borders*') in view of the article "E-Business in the New Beverage Marketplace" (hereafter "the E-Business article"). Although Applicants do not necessarily agree with the current rejection of these claims, Applicants have amended the claims for further specificity. In view of these amendments and the comments included below, Applicants respectfully assert that Claims 1-9, 32-36, 49-52, and 71-73 are patentable over the prior art references cited by the Examiner. Accordingly, Applicants respectfully request that the current rejection of these claims be withdrawn.

Independent Claims 1, 32, 49, 71

To establish a prima facie case of obviousness, three basic criteria must be met. These criteria are as follows: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §2143.

For the reasons set forth below, Applicants respectfully assert that the cited references (i.e. *Borders* and the E-Business article) do not teach or suggest all of the limitations of independent Claims 1, 32, 49, and 71, as currently amended. In addition, Applicants respectfully

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assert that there is no suggestion or motivation to combine *Borders* and the E-Business article as suggested in the recent official action.

Independent Claim 1

Independent Claim 1 is directed to a computer-readable medium for scheduling delivery vehicle visits to a customer within a particular time window. On page 3 of the Office Action, the Examiner states that the recited "time window" is a very broad concept. In particular, the Examiner states that any time spanning a given day is a "time window," and includes in this definition of a "time window" such examples as "during business hours," "before sunrise" and "between 7 a.m. and midnight."

The focus in construing disputed terms of a patent claim is on an objective test of what one of ordinary skill in the art at the time of the invention would have understood the terms to mean. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 986 (Fed.Cir.1995) (en banc), aff'd, ---U.S.---, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). The court must, however, begin with an examination of the words of the claims themselves, "both asserted and nonasserted, to define the scope of the patented invention." *Vitronics*, 90 F.3d at 1582. Terms in a claim are generally given their ordinary and customary meaning. *Hoechst Celanese Corp. v. BP Chemicals Ltd.*, 78 F.3d 1575, 1578 (Fed.Cir.), cert. denied, --- U.S. ---, 117 S.Ct. 275, 136 L.Ed.2d 198 (1996). However, a patentee may give terms a different meaning, so long as the meaning is stated clearly in the patent specification or file history. *Id.*; *Markman*, 52 F.3d at 979-80. Applicants respectfully submit that, within the context of the claimed invention, one of ordinary skill in the art would not attach such a broad definition to the term "time window".

However, to further clarify the recited "time window" aspect of the claimed invention, Applicants have amended Claim 1 to indicate that each delivery vehicle visit within the periodic series of delivery vehicle visits is "to be made on a different day, but within a particular time window, wherein said particular time window is a discrete block of time having a specified start time and a specified end time." As such, Applicants further submit that one of ordinary skill in the art would not likely understand a "milkman-type arrangement" (or any other such

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arrangement noted by the Examiner) to be one that implies a reoccurring delivery *within a particular time window*, as the term "time window" is used in amended Claim 1.

The Examiner also takes the position, on page 5 of the Office Action, that the underlying scheduling methodology is the same as if two completely unrelated deliveries happened to be requested for the same time window on two different days, regardless of who originates each delivery request. Claim 1 has been amended to further clarify that the scheduling of the periodic series of delivery vehicle visits is performed in response to a combination of: "(a) said request, (b) a determination in Step (3) that said first delivery vehicle visit should be scheduled within said particular time window on said first day, and (c) a determination in Step (4) to schedule each respective one of said two or more additional delivery vehicle visits to be made within said particular time window on a particular respective one of said subsequent days." It is respectfully submitted that neither *Borders* nor the E-Business article teaches or suggests all of the limitations of amended Claim 1.

Applicants note that, in addition to the points already discussed, independent Claim 1 has also been amended to further clarify that the present invention includes the step of "allowing said user to specify a schedule for said periodic series of delivery vehicle visits," which are to be made on different days, but within a particular time window. Applicants note that the E-Business article does not discuss allowing customers to specify when various deliveries would be made.

Thus, for at least the reasons set forth above, Applicants respectfully assert that Claim 1 as amended is patentable over the prior art cited by the Examiner. Accordingly, Applicants respectfully request that the current rejection of this claim be withdrawn.

Independent Claims 32 and 49

Independent Claim 32 is a method claim that corresponds generally to independent Claim 1, which is directed to a computer readable medium. Similarly, Independent Claim 49 is a system claim that corresponds generally to independent Claim 1. Accordingly, for the reasons set forth above in regard to amended Claim 1, Applicants respectfully assert that Claims 32 and

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49 as amended are patentable over the prior art cited by the Examiner. Accordingly, Applicants respectfully request that the current rejection of these claims be withdrawn.

Independent Claim 71

Independent Claim 71 is a computer readable medium claim that corresponds generally to independent Claim 1, except that Claim 71 covers a computer-readable medium for scheduling customer visits to a customer, rather than delivery vehicle visits. Thus, for the reasons set forth above in regard to amended Claim 1, Applicants respectfully assert that Claim 71 as amended is patentable over the prior art cited by the Examiner. Accordingly, Applicants respectfully request that the current rejection of this claim be withdrawn.

Dependent Claims 2-9, 33-36, 50-52, and 72-73

Claims 2-9, 33-36, 50-52, and 72-73 depend, respectively, from independent Claims 1, 32, 49, and 71, as amended, and include all of the limitations of their respective independent claims plus additional limitations that are not taught or suggested by the prior art. For instance, dependent Claim 2 provides that the computer-readable medium includes instructions for determining, for each particular one of the two or more additional delivery vehicle visits, whether it would possible to make the particular delivery vehicle visit within the particular time window on a particular respective one of the subsequent days. Similarly, dependent Claim 3 provides that the computer-readable medium includes instructions for determining, for each particular one of the two or more additional delivery vehicle visits, whether it would be economically desirable to make the particular delivery vehicle visit within the particular time window on a particular respective one of the subsequent days. Furthermore, dependent Claim 7 specifies that the computer readable medium comprises computer executable instructions for performing various claimed steps in real time. Thus, for the reasons set forth above, Applicants respectfully assert that dependent Claims 2-9, 33-36, 50-52, and 72-73 as amended are patentable over the prior art cited by the Examiner. Accordingly, Applicants respectfully request that the current rejection of these claims be withdrawn.

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Statements of Official Notice

On Page 6 of the Office Action, the Examiner states that, as per MPEP § 2144.03(C), the statements of Official Notice made in the previous Office Action have been established as admitted prior art. Applicants note that the only statement of which the Examiner appears to explicitly take official notice is the statement that "it is old and well-known in the art to schedule a dry cleaning pick-up from a customer's location," which Applicants have not traversed. Applicants note that the Examiner did not take official notice of the subsequent statement, which indicated that "a delivery truck's route is planned and scheduled similarly regardless of the actions to be performed at each stop since the actual routing is generally not affected by what the truck driver does upon reaching each location along the route, especially in the case of delivering and picking-up non-perishable goods." Applicants in no way agree that this is admitted prior art.

Applicants note that pickups can involve a very different set of logistical considerations than deliveries. For example, when determining whether a certain delivery vehicle is available to deliver a particular package, a primary concern is whether there will be space available to store the particular package on a particular delivery truck at the time that the truck is loaded. Applicants note that scheduling packages or other items to be picked up can involve a variety of additional considerations. For example, one important concern is whether a particular truck will have space available at the time that the truck makes the pickup to store the item to be picked up. This determination often involves forecasting the storage capacity of a particular truck after the truck has made several other deliveries and/or pickups. Thus, this determination is typically significantly more complex than the determination of whether a certain delivery vehicle is available to deliver a particular package.

Accordingly, for at least the reasons set forth above, Applicants respectfully disagree with the assertion that "a delivery truck's route is planned and scheduled similarly regardless of the actions to be performed at each stop since the actual routing is generally not affected by what the truck driver does upon reaching each location along the route, especially in the case of delivering and picking-up non-perishable goods."

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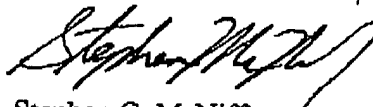
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Conclusion

In view of the remarks presented above, it is respectfully submitted that Claims 1-9, 32-36, 49-52, 71-73, and 79-82 of the application are now in condition for allowance. The Examiner is encouraged to contact Applicants' undersigned attorney at (404) 881-7452 to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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